

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VICTOR K. LEMMONS, JR.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:20-cv-328
)	
JANE DOE, <i>United States Marshall</i>)	
<i>Service, et al.,</i>)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Victor K. Lemmons initiated this lawsuit with the lodging of a *pro se* complaint on November 18, 2020. ECF No. 1. At the time, Plaintiff was a federal prisoner temporarily housed at the Erie County Prison.

Plaintiff's initial complaint concerned medical problems that he was experiencing due to an anal fissure; his request for relief included an immediate referral to a gastroenterologist and punitive damages. ECF No. 1. The complaint was directed against "Jane Doe, United States Marshall Service," "John Doe, United States Marshall Service," "Jane Doe, Liaison of Medical Services," and "John Doe, Liaison of Medical Services," all of whom were alleged to have mailing addresses at the United States Courthouse in Erie. *Id.*

The matter was referred to United States Magistrate Judge Richard A. Lanzillo for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Civil Rules of this Court. Thereafter, Plaintiff underwent several transfers to various housing facilities.

On June 1, 2021, Plaintiff filed an Amended Complaint -- the operative pleading in this case -- naming the same John and Jane Doe Defendants under the same federal courthouse

address. ECF No. 23. The U.S. Marshal Service attempted to make informal service of the complaint using the mailing address provided by Plaintiff, but the summons was returned unexecuted. ECF No. 28.

Accordingly, the Magistrate Judge entered an order on January 27, 2022 directing Plaintiff to show cause by February 17, 2022 why the claims against the John and Jane Doe Defendants should not be dismissed for failure to effectuate timely service in accordance with Federal Rule of Civil Procedure 4(m). In the alternative, Plaintiff was given leave to file a Second Amended Complaint, on or before February 17, 2022, which would identify the various Doe Defendants with sufficient specificity to allow service of process. ECF No. 32. Plaintiff did neither.

Consequently, Judge Lanzillo issued a Report and Recommendation (“R&R”) on April 22, 2022, opining that Plaintiff’s Amended Complaint should be dismissed without prejudice. Judge Lanzillo concluded that dismissal was appropriate on any of the following bases: (1) Plaintiff’s failure to effectuate timely service of process as required by Rule 4(m); (2) Plaintiff’s failure to obey the Court’s show cause order or otherwise participate in the prosecution of his claims; and/or (3) Plaintiff’s failure to state a cognizable basis for relief in his Amended Complaint. Objections to the R&R were due no later than May 9, 2022. To date, no objections have been filed.

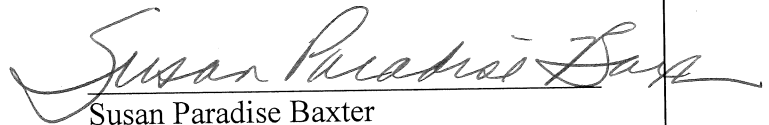
Accordingly, after *de novo* review of the operative complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

NOW, this 7th day of June, 2022;

IT IS ORDERED that the within civil action shall be, and hereby is, DISMISSED without prejudice in accordance with Rule 4(m) of the Federal Rules of Civil Procedure, based upon Plaintiff's failure, without good cause shown, to effectuate timely service of the Amended Complaint upon the named Defendants.

IT IS FURTHER ORDERED that the Report and Recommendation of U.S. Magistrate Judge Lanzillo issued on April 22, 2022, ECF No. [33], shall be, and hereby is, adopted as the opinion of the Court, to the extent set forth herein.

There being no further claims pending before the Court in the within civil action, the Clerk is directed to mark this case "CLOSED."


Susan Paradise Baxter
United States District Judge

cm:

Victor K. Lemmons, Jr.
134 Gabion Loop
Ellenwood, GA 30294

(U.S. Mail, First Class)